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VIA ECF

The Honorable Gregory H. Woods
United States District Court for
the Southern District of New York
500 Pearl Street
New York, New York 10007-1312

Re: *Wells Fargo Bank, N.A., as Trustee ("Trustee") v. Waterfall Asset Mgmt., LLC*
("Waterfall"), *The Bank of New York Mellon ("BNY Mellon")*, and *Cede & Co.*
(1:18-cv-00295)

Dear Judge Woods:

We represent Interpleader Defendant BNY Mellon. We write in response to the improperly filed "Memorandum of Law In Support of Interpleader Defendant Waterfall Asset Management LLC's Opposition To Bank of New York Mellon's Motion to Dismiss The Amended Interpleader Complaint" (Dkt. 53).

Waterfall has simply assumed – without support, explanation, or citation – that it has the right to participate in motion practice between the Trustee and BNY Mellon, much the same way it has assumed that it has the right to interfere with a swap agreement to which it is not a party in interest, and where it is admittedly a non-controlling noteholder under the Indenture.

We are aware of no rule permitting Waterfall to participate in BNY Mellon's Motion to Dismiss absent permission from the Court. While Rule 27 of the Federal Rules of Appellate Procedure specifically states that "**any party** may file a response to a motion" (emphasis added), there is no such provision in the Federal Rules of Civil Procedure. Nor is there any precedent that BNY Mellon is aware of explaining why defendants who have already filed responsive pleadings under Rule 12 should also participate in motion practice between two different parties, particularly where, as here, lack of participation does not harm the non-participating defendants.

Accordingly, BNY Mellon respectfully requests that Waterfall's submission be dismissed. If the Court is inclined to consider Waterfall's brief, BNY Mellon respectfully requests a briefing schedule to address it.

Respectfully,

/s/ Kenneth L. Bressler

Kenneth L. Bressler